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OFFICE OF THE ASSISTANT SECRETARY  
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MAY - 8 2002

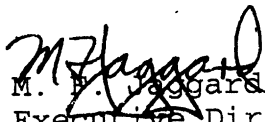
MEMORANDUM FOR HEADS OF CONTRACTING ACTIVITIES  
PROGRAM EXECUTIVE OFFICERS  
DIRECT REPORTING PROGRAM MANAGERS

Subj: USE OF PERFORMANCE-BASED CONTRACTS FOR THE ACQUISITION OF  
SERVICES

Encl: (1) USD(AT&L) memo of January 2, 2002  
(2) Interim DoN Section 821 Report Format

Section 821 of the National Defense Authorization Act for Fiscal Year 2001, Pub. L. 106-698, includes provisions to accelerate the use of performance-based service contracts and provides pilot authority to treat services acquired by performance-based contracts or task orders as commercial items if the contract or task order meets the criteria in enclosure (1). This authority is available for contract actions issued before October 30, 2003. This authority should encourage commercial firms to participate in Department of Defense contracts.

We are working with the Director, Defense Procurement to expedite development of the content and format requirements for the DoD report on use of this pilot authority. Pending release of the DoD report format, please keep a record of your use of the pilot authority, including at least the information described in enclosure (2).

  
M. P. Jaggar  
Executive Director  
Acquisition and Business  
Management

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ACQUISITION AND  
TECHNOLOGY

THE UNDER SECRETARY OF DEFENSE

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WASHINGTON, DC 20301-3010

JAN 2 2002

*Sec Navy*

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS  
DIRECTORS, DEFENSE AGENCIES

SUBJECT: Use of Performance-Based Contracts for the Acquisition of Services

The acquisition of services accounts for an increasing share of our annual outlays. The Department of Defense is committed to awarding 50 percent of all contracts for services, in terms of dollars and actions, as performance-based services by 2005 which is consistent with OMB direction.

Section 821 of the National Defense Authorization Act for Fiscal Year 2001, P.L. 106-398, includes provisions designed to accelerate use of performance-based service contracts. It required a revision to the Federal Acquisition Regulation (FAR) to establish a preference for the use of performance-based contracts or task orders that contain firm fixed prices for the specific services. The FAR was modified on May 2, 2001, making this change. It also provides pilot authority to treat services acquired by performance-based contracts or task orders, at any tier, as commercial items if the contract or task order:

- is valued at \$5 million or less;
- sets forth specifically each task to be performed, and for each task; defines the task in measurable, mission-related terms; identifies the specific end products or outputs to be achieved;
- is firm fixed price;
- is not issued under FAR 13.5 (Test Program for Certain Commercial Items); and
- is issued to a source that provides similar services contemporaneously to the general public under terms and conditions similar to those offered the Federal Government.

The interim DFARS rule implementing this pilot authority was issued on December 6, 2001. This authority is available for contract actions issued until October 30, 2003.

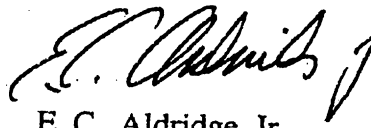
The authority to acquire firm-fixed-price, performance-based services under FAR Part 12 should result in more commercial firms participating in the Department's contracts. It is therefore important that we thoroughly test this authority during the pilot



*ENCL (1)*

period to demonstrate its value. Additional direction on the reporting requirements of the pilot authority is forthcoming from Director, Defense Procurement.

Section 821 also provides that the Secretary of each Military Department shall establish at least one center of excellence in contracting for services. Each center of excellence should assist the acquisition technology and logistics community by identifying and disseminating best practices in contracting for services in the public and private sectors. Please report your progress in this area to the Director, Defense  
// Procurement, within 90 days of the date of this memorandum.

  
E. C. Aldridge, Jr.

ATTACH:  
SECTION 821, PubL. 106-398

SEC. 821. IMPROVEMENTS IN PROCUREMENTS OF SERVICES.

(a) Preference for Performance-Based Service Contracting.--Not later than 180 days after the date of the enactment of this Act, the Federal Acquisition Regulation issued in accordance with sections 6 and 25 of the Office of Federal Procurement Policy Act (41 U.S.C. 405 and 421) shall be revised to establish a preference for use of contracts and task orders for the purchase of services in the following order of precedence:

(1) A performance-based contract or performance-based task order that contains firm fixed prices for the specific tasks to be performed.

(2) Any other performance-based contract or performance-based task order.

(3) Any contract or task order that is not a performance-based contract or a performance-based task order.

(b) Incentive for Use of Performance-Based Service Contracts.--

(1) A Department of Defense performance-based service contract or performance-based task order may be treated as a contract for the procurement of commercial items if--

(A) the contract or task order is valued at \$5,000,000 or less;

(B) the contract or task order sets forth specifically each task to be performed and, for each task--

(i) defines the task in measurable, mission-related terms;

(ii) identifies the specific end products or output to be achieved; and

(iii) contains a firm fixed price; and

(C) the source of the services provides similar services contemporaneously to the general public under terms and conditions similar to those offered to the Federal Government.

(2) The special simplified procedures provided in the Federal Acquisition Regulation pursuant to section 2304(g)(1)(B) of title 10, United States Code, shall not apply to a performance-based service contract or performance-based task order that is treated as a contract for the procurement of commercial items under paragraph (1).

(3) Not later than 2 years after the date of the enactment of this Act, the Comptroller General shall submit a report on the implementation of this subsection to the congressional defense committees.

(4) The authority under this subsection shall not apply to contracts entered into or task orders issued more than 3 years after the date of the enactment of this Act.

(c) Centers of Excellence in Service Contracting.--Not later than 180 days after the date of the enactment of this Act, the Secretary of each military department shall establish at least one center of excellence in contracting for services. Each center of excellence shall assist the acquisition community by identifying, and serving as a clearinghouse for, best practices in contracting for services in the public and private sectors.

(d) Enhanced Training in Service Contracting.--(1) The Secretary of Defense shall ensure that classes focusing specifically on contracting for services are offered by the Defense Acquisition University and the Defense Systems Management College and are otherwise available to contracting personnel throughout the Department of Defense.

(2) The Secretary of each military department and the head of each Defense Agency shall ensure that the personnel of the department or agency, as the case may be, who are responsible for the awarding and management of contracts for services receive appropriate training that is focused specifically on contracting for services.

(e) Definitions.--In this section:

(1) The term ``performance-based'', with respect to a contract, a task order, or contracting, means that the contract, task order, or contracting, respectively, includes the use of performance work statements that set forth contract requirements in clear, specific, and objective terms with measurable outcomes.

(2) The term ``commercial item'' has the meaning given the term in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)).

(3) The term ``Defense Agency'' has the meaning given the term in section 101(a)(11) of title 10, United States Code.

## Interim DoN Section 821 Report Format

Requisition Number: \_\_\_\_\_

Contract Number: \_\_\_\_\_

Order Number: \_\_\_\_\_

\* \* \* \* \*

1. Placement:

a. Was competition increased? Yes ( )  
No ( )

b. Did Non-traditional contractor participate? Yes ( )  
No ( )

b. Did non-traditional contractor get award? Yes ( )  
No ( )

C. Did use of authority save time? Yes ( )  
No ( )

1. If yes, estimated PALT reduction: \_\_\_\_\_

d. Did use of authority result in cost savings: Yes ( )  
No ( )

1. Estimated cost savings: \$ \_\_\_\_\_

2. Comments on benefits/issues from use of pilot authority:

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ENCL (2)